

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

77-7080

UNITED STATES COURT OF APPEAL

SECOND CIRCUIT, NEW YORK

DOCKET NO. 77-7080

SIMON O. AYAH,

PLAINTIFF-APPELLANT

V.

NEW YORK UNIVERSITY,

DEFENDANT-APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRIEF OF PLAINTIFF-APPELLANT

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UNITED STATES COURT OF APPEAL
SECOND CIRCUIT, NEW YORK
Docket no. 77-7080

SIMON O. AYAH

Plaintiff - APPELLANT

v.

NEW YORK UNIVERSITY

Defendant - APPELLEE

BRIEF OF PLAINTIFF-APPELLANT

INTRODUCTION

This is a diversity case involving federal question for a declaratory judgment pursuant to section 2202, title 28 USC. Jurisdiction is founded on sections 1331, 1332 of title 28 USC and on First and Fourteenth Amendments rights of the Constitution.

The only action before the lower Court on January 7, 1977, was the motion on a preliminary injunction, pursuant to Rule 65 FRCP brought by the Plaintiff-Appellant. As for the subject matter of the dispute, Defendant-Appellee's motion to dismiss was returnable before Hon. Judge Tenney on February 8, 1977. The said Defendant also notified Hon. Judge Carter at the hearing on preliminary injunction of its intention to move for dismissal of Plaintiff's action before Hon. Judge Tenney, on February 8, 1977. However, on January 25, 1977, Hon. Judge Carter entered an order dismissing Plaintiff's complaint.

As clearly stated in the deposition supporting the motion to reconsider, copy of which is attached to forms C & D of this appeal, Plaintiff's position is that since Rule 65 is procedural, it is by its nature, and by the nature of the dispute, not a trial on the merits.

Consequently, there is a heavy doubt whether equity Court is competent to decide on the legal relations between the parties litigant. Since Hon. Judge Tenney has not affirmatively relinquished jurisdiction over the subject matter of the dispute, it is also questionable whether Hon. Judge Carter sitting in equity or exercising equity "jurisdiction" could properly entertain and decide on issues involving questions of law. There is a question involving local rule - as to whether the equity Court should have disallowed defendant's opposing papers which were served on the Plaintiff as well as submitted to the Court only 30 minutes before the hearing on Plaintiff's motion for a preliminary injunction.

For the aforementioned reasons, Plaintiff's appeal to this Court seeks a review of a question of law.

I

ISSUES PRESENTED

The Appellant proposes to raise the following issues:-

- (1) That the Court is not competent to decide on the subject matter of the case
 - (a) Is Rule 65 FRCP a grant of jurisdiction over the subject matter?
 - (b) Is trial pursuant to Rule 65 FRCP a trial on the merits?
 - (c) Should equity Court interfere with the determination of the legal issues of the dispute?
- (2) That there is an initial breach of international law
 - (a) Whether the trial in the Eastern District Court conformed to the procedural requirements of due process?
 - (b) Is the decision in the Eastern District fair such as should be admissible in a rational administration of justice?
 - (c) Was the Plaintiff afforded equal protection of law by the Court below?
- (3) That there is no basis for res judicata
 - (a) Does res judicata apply in instances of denial of due process?
 - (b) Does res judicata apply in instances of denial of justice?
 - (c) Should a decision involving unequal protection of law constitute a basis for res judicata?
 - (d) Is the Eastern District decision judicial?
- (4) Is Plaintiff entitled to a fair trial?

II

STATEMENT OF THE CASESTATEMENT OF THE CASE

Complaint was filed on November 22, 1976. After more than three weeks Plaintiff learned that a copy of the complaint including the required summons had not been served on the Defendant by the U.S. Marshall. The U.S. Marshall told the Plaintiff that they were not able to do the service because they had not enough manpower, and for this reason they were not in a position to say whether or not they would be able to serve the summons on the Defendant. On 6th December 1976, Plaintiff obtained a repossession of the complaint and had it served on the Defendant by a third party on December 10, 1976.

The case was assigned to Honourable Judge Charles Tenney since November 22, 1976. On December 22, 1976 the Defendant applied for and obtained an order for an enlargement of time to January 12, 1977 from Judge Tenney. Judge Tenney left immediately after signing the order for a vacation and was due back to his chamber on January 14, 1977. Plaintiff also received from the Court clerk a notice, a copy of which was sent to the Defendant, for a calendar call before Judge Tenney on January 19, 1977.

In its application for extension of time, Defendant informed Hon. Judge Tenney of its intention to move for dismissal by a summary judgment. On January 7, 1977 the Defendant requested the Plaintiff for another extension of time and by a stipulation of the same date, the time within which to file all the necessary papers as required under Rule 56 FRCP, was extended to January 19, 1977. On January 23, 1977 Plaintiff received Defendant's papers dated January 21, 1977 which included: a notice, a statement pursuant to Rule 9 (g), two affidavits and a memorandum of law. These papers were addressed to Hon. Judge Tenney and Defendant's motion to dismiss was returnable in Judge Tenney's chamber on February 8, 1977 at 10.30 a.m.

On February 1st, 1977 the Plaintiff sent to Defendant postage prepaid his papers in opposition to Defendant's motion to dismiss. Plaintiff's papers included: a statement pursuant to Rule 9 (g), an affidavit and an answering memorandum of law; and these papers were accordingly filed with the Court.

At no time during the pleading did Honorable Judge Charles Tenney relinquish jurisdiction over the case.

STATEMENT OF PROCEEDING BELOW

The proceeding was concerned with an order to show cause for a preliminary injunction, pursuant to Rule 65 FRCP. Plaintiff obtained an order to show cause signed by Honorable Judge Greasas who was sitting in Part I of the Court, on December 28, 1976. The motion for a preliminary injunction was returnable in Part I of the Court on January 7, 1977.

Before Honorable Judge Robert Carter, two issues for the motion were presented, namely: to preliminarily enjoin Defendant to release complete and correct transcripts of Plaintiff at New York University to other institutions; and for the Defendant to state why Plaintiff is not entitled to terminate his program at M.A. level. Both of these issues are not included in the issues before the Court for a declaratory judgment. However, on January 25, 1977, Judge Carter entered an order denying Plaintiff's motion for a preliminary injunction as well as dismissing Plaintiff's complaint.

As stated above, Judge Tenney had at no time affirmatively relinquished jurisdiction over the subject matter of the dispute. On the other hand Judge Carter's equity "jurisdiction" pursuant to Rule 65 FRCP was purely incidental, and it cannot be said that he was familiar with the case. To acquire jurisdiction over the subject matter, it would have been proper for Judge Carter to get Judge Tenney to affirmatively relinquish jurisdiction over the case, as Honorable Judge Platt did by his own motion disqualifying himself and thus enabling Judge Constantino to assume effective jurisdiction over the case in the Eastern District. Plain-

tiff's motion for reconsideration of the Court's order of January 25, 1977 was based principally on the fact that equity Court is not competent to decide on the subject matter of the dispute.

As concerns the object of Plaintiff's motion pursuant to Rule 65 FRCP, Defendant has as yet to release complete and correct transcripts of Plaintiff's courses at New York University. Plaintiff can attest that he did not insist on having these transcripts given to him. The practice in New York University is that a copy of the transcript (student copy) is sent to each student at the end of each semester; and Plaintiff has not yet received his own copy of the transcript from the Defendant institution.

During the hearing, Plaintiff objected to receiving Defendant's papers opposing Plaintiff's motion only 30 minutes before the motion was returnable in Part I of the Court. It appears that this surprise move by the Defendant was allowed by the Court. Under the general rules of the Court, such surprise move should not have been encouraged.

The fact that the Court sitting in equity under Rule 65 FRCP and the fact that Hon. Judge Tenney at no time affirmatively relinquished jurisdiction over the case as well as the irregularity concerning the application of the local rule of the Court, are issues in the Plaintiff's motion requesting Judge Carter's reconsideration of his decision. The Plaintiff has yet to receive the Court's review of its decision.

THE FACTS OF THE CASE

In July 1973 Plaintiff was accepted for admission in New York University as well as in the Ph.D. program in the politics Department of New York University. This means that on admission into the Ph.D. program, the student concerned is automatically a candidate for the M.A. degree. The student concerned may be refused matriculation in the Ph.D. program, but his relation with the University remains intact and he is entitled as

a rule in practice at New York University to terminate his program with the M.A. degree, unless otherwise the student is not in good standing with the University or the student has on his own chosen to discontinue his program (affidavit of Richard Randall, sworn to 22nd April 1976, paragraphs 3 and 4).

The Plaintiff was accepted into the Ph.D. program; the documentary evidence also certifies that Plaintiff is a matriculant (i.e. a degree student) and there is no evidence to date to indicate that the Plaintiff is not in good standing in New York University or in the Defendant's politics Department. The letter of Dean Raymo dated 14th October 1976 is in character and quality a retaliatory response to Plaintiff's letter of October 7, 1976 to the New York University President, Dr. John C. Sawhill. Although, the Plaintiff received the letter on November 13, 1976, Plaintiff still does not know why he has no current status as the letter states. Plaintiff believes that an extreme decision such as concerns his property interest and liberty, should have conformed to the regulations, rules and practices of New York University. In the absence of such satisfaction, Plaintiff is justified to believe that he is a student and in good standing in New York University as well as in the Defendant's politics Department.

The order and memorandum of the Eastern District Court settled the issue that this Plaintiff should not continue in the Ph.D. program in New York University, which is not an issue in the legal suit before this Court. Although the order and memorandum of the Eastern District Court are a heavy burden on the Plaintiff, this Plaintiff respects the decision and does not intend to attack it before this Court. This present action has nothing to do with the order and memorandum of the Eastern District Court in that this action is not predicated or based upon the same claim or demand as to matters that were necessarily integrated and determined by the Eastern District Court.

On April 8, 1976, after the Eastern District Court action was instituted, Plaintiff was allowed a limited access to his records with New York University.

Upon reviewing his records Plaintiff found that the Defendant did in fact send Plaintiff's records to Laval University and that said Defendant in fact had transacted to transfer two of the courses completed by the Plaintiff at New York to Laval University. The Defendant's position is that "two of the courses were accepted by Laval University and credited towards fulfilling the Plaintiff's courses requirements at Laval University towards the M.A. degree" (memorandum of Defendant, p. 8). The Defendant has yet to establish on what authority this claim is based. On the other hand, Plaintiff was not aware of such transaction and does not approve of it and does not accede to such transaction; and such secret transaction is unauthorized from the point of view of the regulations, rules and practices of New York University.

Defendant has also refused Plaintiff to review other important documents which clearly implicate said Defendant in a role detrimental to the property interest and liberty of the Plaintiff. As clearly established by the documentary evidence attached to the Plaintiff's affidavit in opposition to the motion to dismiss (Exb. "Y"), the Defendant is having difficulty identifying these documents which were disseminated to another institution with the intent to deform Plaintiff's character.

On July 16, 1976 the chairman, Politics Department of New York University wrote Plaintiff further attesting that Plaintiff is in good standing with the Department. On August 1st, 1976 Plaintiff, by a letter to the chairman, Politics Department of New York University, requested to terminate his program with the M.A. degree, by virtue of a provision under change of status (GSAS Bulletin (1976-78), p. 54). The Politics Department's claim that such change of status required the approval of the Admissions Office was immediately dismissed as untrue by the Director of Graduate Admissions (cf: Exhibits 14 and 15 attached to complaint).

Under the rules, regulations and practices of New York University, Plaintiff is a student in good standing in New York University as well as in the

Politics Department of New York University and Plaintiff is entitled to terminate his program with an M.A. degree. It is therefore the failure or rather the refusal of the Defendant New York University to equally interpret and apply its published regulations as concerns the Plaintiff that is the gravamen of this present controversy.

RELEVANT N.Y. U. REGULATIONS

New York University is an independent institution. Since it receives public and governmental financial assistance, New York University is not exclusively private.

It derives its income from tuition, endowment, grants from private foundations and government, and gifts from friends, alumni, corporations and other private philanthropic sources (p. 3, par. 6, Graduate School of Arts and Science Bulletin, 1976-78).

Permit to register, p. 53, Graduate School of Arts and Science (1976-78) - A new applicant to the Graduate School of Arts and Science will receive two copies of the Permit to Register along with a letter of acceptance. This form serves three functions: (1) to certify that the student is eligible to register; (2) to advise the student of transfer credit awarded and conditions of admission; and (3) to certify the student's entering status. NO NEW STUDENT WILL BE PERMITTED TO COMPLETE REGISTRATION WITHOUT PRESENTING THE "PERMIT TO REGISTER".

Change of status to master's or Ph.D. program, p. 54, Graduate School of Arts and Science Bulletin (1976-78) - Graduate School students completing the master's degree who wish to continue their study toward a Ph.D. in the same department must petition the department chairman for approval of such a change. The department will notify the student and the Recording Office of its decision. Forms for this purpose are available in the Recording Office. Students wishing to change from non-matriculant to master's or doctoral programs should follow the same change of status procedure.

Classification of Admission, p. 52, Graduate School of Arts and Science Bulletin (1976-78) -

Matriculants: Students seeking graduate degrees who may or may not have to satisfy department and/or graduate school conditions;

Non matriculants: Students who are not seeking degrees and who may be accepted with or without conditions of admission (possible only in certain departments)... No more than 12 credits may be taken as a non matriculant without departmental approval.

Discipline, p. 58, Graduate School of Arts and Science Bulletin (1976-78) - Students are expected to familiarize themselves and to comply with the rules of conduct, academic regulations and established practices of the University and of the Graduate School of Arts and Science... Violations will be referred to the Dean and to the Faculty Committee on Discipline.

The N.Y. U. regulations in force provides that students can only be suspended or dismissed on either of these two grounds: (1) poor scholarship (honorable) or (2) violation of the examination rules or other serious breaches of discipline (dishonorable). NO CHARGES ON THESE GROUNDS HAVE BEEN BROUGHT AGAINST THE PLAINTIFF.

III

THAT TRIAL PURSUANT TO RULE 65
IS NOT A TRIAL ON MERITS; AND,
THAT RULE 65 IS NOT A GRANT OF
JURISDICTION

The law applicable under Rule 65 FRCP

According to Prof. Moore:

Rule 65, which is procedural, does not affect the substantial basis for injunctive relief, nor the jurisdictional statutes and principles regulating the federal injunction¹.

It determines only the method of seeking and obtaining any sort of an injunction, and has no bearing on either the jurisdiction to exercise, or the propriety of exercising, the injunctive power. Moreover, even along procedural lines, the rule is confined to provisions that guard against the abuse of the process, and does not impinge on the type of hearing required nor on the method of enforcement².

Prof. Moore is of the opinion that Rule 65 is not the proper means of disposing with the merit of a given case even though in cases where a Court is familiar with the issues in dispute and may be said to have acquired title to jurisdiction in rem, Rule 65 is not a grant of authority to decide on the issues. A Court in Pennsylvania stated that Rule 65 does not purport to confer jurisdiction upon the Courts, but rather they restrict the power of the Courts to act in cases in which they have already acquired jurisdiction³.

1. 7 Moore Federal Practice (1975) p. 65-17

2. Ibid p. 65-25

3. Moses Taylor Lodge No. 95 v. Delaware, L&W.R. Co.
(MD Pa 1941) 39 F Supp. 456, 457, 4 FR Ser. 65e I,
Case 2

However, there are instances in which Courts exercising their equity jurisdiction under Rule 65, have gone into the merits of the cases. These are cases of permanent injunction where the relief applied for in preliminary injunction hearing is the same as to be determined in the final hearing of the case. Even in these cases of permanent injunction, the rule is that in the hearing for a preliminary injunction the Court should not act in contradiction to the due process requirements. This position is clearly articulated in State ex rel. Eagleton v. Cameron (mo.) 384 SW 2d 627; Whaley v. Broadway Taxi Co. 252 NC 586, 114 SE 2d 254.

It has been held that the Court, on denying the application for a temporary injunction, should not dismiss the petition on the merits unless the parties have expressly agreed to try the action on the merits at the time of the hearing on the application for temporary relief. If, however, it is shown at the hearing on an order to show cause that as a matter of law the Plaintiff would in no event be entitled to a permanent injunction, the matter may then be finally disposed of, but this should be done pursuant to a motion for a summary judgment or other appropriate proceeding⁴.

This is the rule pursuant to Rule 65 FRCP which is procedural as far as injunctive actions are concerned, and as in other cases, a dismissal without prejudice in an injunction case operates as a non suit and reserves the right to file another suit.

But the action in the Southern District is not for a permanent injunction. In cases which are not

4. 42 AM Jur. 2d, Injunction, Section 291, p. 1090

for permanent injunction, the function of a preliminary injunction, is to preserve the statu quo pending a trial on the merits. Judge Taft, citing cases, explained that:

The office of a preliminary injunction is to preserve the status quo until upon final hearing, the Court may grant full relief. Generally this can be accomplished by an injunction prohibition in form, but it sometimes happens that the status quo is a condition not of rest, but of action, and the condition of rest is exactly what will inflict the irreparable injury upon complainant, which he appeals to a Court of equity to protect him from. In such a case Courts of equity issue mandatory writs before the case is heard on its merits⁵.

Judge Sanborn⁶ and later Judge Treanor⁷ held similar views. In the often quoted decision of Judge Treanor:

The action of the District Court on a motion for preliminary injunction is not predicated upon an anticipated determination of issues of fact or questions of law which may be involved in the case. Consequently, where the granting of a preliminary injunction would give to a Plaintiff all the actual advantage which could be obtained by the Plaintiff as a result of a final ad-

5. Bowman v. Lake County Public Building Com.
31 1U 2d 575, 203 NE 2d 129
6. Love v. Atchison, T&S.F Ry. Co. (CCA 8th, 1911)
185 F321, 331-332
7. Selchow & Righter Co. v. Western Printing and Lithographing Co. (CCA 7th, 1940) 112 F 2d 430, 431

judication of the controversy in favor of the Plaintiff, a motion for preliminary injunction ordinarily should be denied. On the other hand, when the denial of the motion will result in great injury to the Plaintiff and in the Defendant's getting substantial advantage to which he would be entitled only as the result of a final adjudication in his favor, the preliminary should be granted if the Defendant's interest can be protected by an indemnifying bond⁸.

The cited cases clearly support the maxim that equity follows the law and equity should apply only where there is no remedy at law: equitas sequitur legem. But where there is equal equity the law should apply: In aequali jure melior est conditio possidentis. There is no where in the writings of authorities and in cases in which it is asserted that equity should interfere with the due process of law. Only in a very rare case will a Court of equity enjoin the prosecution or commencement of a suit in the same Court⁹. It is even asserted that: Relief will not be granted to restrain proceedings regularly and orderly conduct in other Courts competent to decide every question that may arise in the course of the proceedings, and the fact that there is a complexity of questions, presented or that it would be more convenient for the person seeking the injunction to litigate the matter in that Court than in the Court where the action was brought, does not change the rule¹⁰.

8. Ibid, Quoted in Moore, op. cit., Purpose of Preliminary Injunction, section 65-04(1)

9. 42 Am Jur. 2d, Injunction, Section 203, pp. 983-984

10. Ibid, p. 984

As concerns declaratory judgment, Prof. Moore, citing Rockefeller v. First Nat. Bank of Brunswick (SD Ga 1957 154 F Supp. 122, 125 declares:

The general rule that the jurisdiction of a Court, state or federal, having in rem or quasi in rem control or disposition of specific property, cannot be interfered with, and that this rule involves a principle of necessity that leaves nothing to discretion, applies as well to declaratory actions as to other proceedings. Hence in a declaratory in rem action a federal Court cannot interfere by injunction or otherwise with a state Court's prior in rem or quasi in rem jurisdiction. An in personam declaratory action to determine rights in a res, without asserting control, may, however, be maintained pursuant to the usual principles governing such an action¹¹.

Even mere pretext or claim for res judicata is not a ground, under the rule, for a Court of equity to interfere with or debar the proceedings of an action. It is also asserted that there is in such a case no occasion for resorting to equity to restrain the prosecution of the second action¹². In Bowman v. Lake County Public Building Com., the Court stated that the granting of an injunction against the prosecution of an action does not deprive a party of the "full hearing" guaranteed by the due process clauses of the federal and state constitutions, where the actions enjoined is simply a second effort to litigate matters adjudicated in a prior action¹³.

11. 1A Moore Federal Practice (1974) p. 2605

12. 42 Am Jur. 2d, Injunction, Section 207, p. 989

13. 31 1U 2d 575, 203 NE 2d 129, App. dismd and cert. den. 382 US 13, 15 Led 2d 9, 86 S Ct 44

To put in a nutshell what we have discussed thus it is submitted that equity should not interfere where there is adequate remedy at law and that injunction is intended to aid rather than to frustrate or debar the proceedings of any action. It is even clearly stated that there is no occasion for equity interference where the Court can, in the action before it, do as full justice to the parties and to the matter in dispute as can be done in an injunction suit¹⁴. The Oregon Court and the Nebraska Federal Court of Appeal positions reflect the view that if a defense or other matter arising during the action can be adequately presented in Court of equity, and the Court can properly adjudicate the rights and interests of the parties and put an end to the litigation, equity will not interfere by injunction¹⁵.

Argument

In the present case, the Court was sitting in equity, its function being to apply its discretion pursuant to Rule 65 FRCP. Its in personam jurisdiction was never in doubt; but it was clearly not competent to decide on the issues involving the legal relations of the parties in the dispute, because of the nature of the proceeding, actions authorized under Rule 65 being procedural, and principally because it had no claim to title of jurisdiction ratione materiae.

There are cases in which equity Court had proceeded to dispose of the entire issues in dispute. As we pointed out earlier, these cases involve cases of permanent injunction in which the relief sought for in a preliminary injunction is the same as that which will be decided in the final adjudication. Even, under these permissive instances, Courts of equity had rarely ordered for advancement and consolidation, without being satisfied that the parties' right to full hearing is protected. This is the true application of Rule 65(a)2.

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14. Cf: Moss Mercantile Co. v. First Nat. Bank, 47 Or. 361, 82 P8; also Williams v. Neely (CA 8 Neb.) 134 F 1
 15. See, generally, 42 Am Jur. 2d, Injunction, Section 208, pp. 990 ff.

The question of jurisdiction and procedure can be said to constitute the core business of Federal Courts. And jurisdiction, being generally referred to as competence, or authority to entertain and decide on issues before the Court, is founded on constitutional and statutes provisions. Rule 65 FRCP is not a grant of jurisdiction; and it has been said that where a Court has no jurisdiction prima facie, it will not entertain any action under Rule 65.

The function is clearly divided as in this action, one judge who is familiar with the case, to whom the case is assigned, and the other judge who was called upon to sit in equity in order to preserve the statu quo between the parties litigants. This is not a question of conflict of jurisdiction. Even if the equity Court is in doubt of its jurisdiction, it should first resolve the issue of jurisdiction, that is to say, decide on its jurisdiction (competence a la competence). And as in this case, equity Court was aware, it had no jurisdiction in rem, it should have in the interest of justice abstained from interfering in the proceeding by injunction.

In the United States v. Bank of New York & Trust Co.¹⁶ (1936) the Court stated that after a Court has once acquired possessory jurisdiction of a res, the general rule is that its jurisdiction does not end without some affirmative act of relinquishment. In Penn General Casualty Co. v. Pennsylvania (1935) 294 US 189, 195, 55 S Ct 386, 389, 79 L ed. 850, 855 the principle is established that the Court first assuming jurisdiction over the subject matter may maintain and exercise that jurisdiction to the exclusion of the other¹⁷.

It is reasonably clear that Rule 65 FRCP is not a grant of jurisdiction; does not invest on the Court the authority or competence to entertain legal

16. 296 US 463, 56 S Ct 343, 80 L ed 331. See also, Kittredge v. Stevens (CCA 1st, 1942) 126 F2d 263, cert den (1942) 317 US 642, 63 S Ct. 34, 87 L ed 517

17. Cf: also, Young v. Hamilton, 135 Ga 339, 69 Se 593 in which it is stated "But where the object of the action requires the control and dominion of the property involved in the litigation, that Court which first acquires possession, or the dominion which is equivalent, draws to itself the exclusive right to dispose of it, for the purposes of its jurisdiction."

issues where there is adequate remedy at law; and the discretionary power of the Court derivative from rule 65 FRCP should not be used excessively and extravagantly. For these reasons it is respectfully submitted that the equity Court is not competent to decide on the applicability of res judicata, which is principally a question of law.

IV

THAT RES JUDICATA DOES NOT APPLY IN
 INSTANCES OF DENIAL OF JUSTICE, OR
 ABSENCE OF DUE PROCESS; AND THAT RES
 JUDICATA AS A RULE IS NEVER INTENDED
 AS AN IMMUNITY

Law governing res judicata

The doctrine of "res judicata" is primarily one of public policy and only secondarily of private benefit to individual litigants, and has its roots in maxim that it concerns public that there be an end to litigation when one party has had a full and free opportunity of presenting all facts pertinent to the controversy. Buromin Co. v. Nat. Aluminate Corp. D.C. - Del., 70 F. Supp. 44, 217. In the interest of the public, it is the duty of the trial Court to do justice to the parties litigants, to accord each litigant the opportunity to be heard and to conduct its trial in all fairness as a basis for settling the dispute between the litigants with finality. Chief Justice Waite observed a long time ago that in order for a Court:

To give effect to its sentences it must appear affirmatively and unequivocally that the Court was legally constituted, that it had jurisdiction; that all the statutory regulations governing its proceedings had been complied with, and that its sentence was conformable to law... There are no presumptions in its favor so far as these matters have concerned¹⁹.

Prof. Moore states the same position as follows:

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18. See also, Shook v. Gallagher, 79 N.Y. S. 2d 572, 573
 19. Runkle v. United States (1887) 122 US 543, 555-556,
 7 S Ct 1141, 30 L ed 1167

A judgment is void, although the Court has jurisdiction over both subject matter and the parties, where it (Court) proceeds in such an arbitrary or improper manner that its actions may be said to constitute a denial of due process²⁰.

A Californian Court stated that the doctrine of res judicata must conform to mandate of due process of law that no person be deprived of personal or property rights by a judgment without notice and an opportunity to be heard²¹. Another eminent Court declared that res judicata is a doctrine of peace, which is not to be applied to a denial of justice, or to deprive a party of a righteous defense²². In Griffin v. Griffin, 327 U.S. 220 (1946) the Supreme Court stated that:

A judgment obtained in violation of procedural due process is not entitled to full faith and credit when sued upon in another jurisdiction (citing cases). Moreover, due process requires that no other jurisdiction shall give effect, even as a matter comity, to a judgment elsewhere acquired without due process (citing Restatements, Judgments at 228-29).

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- 20. IB Moore Federal Practice, p. 652. Cf also, Windsor v. McVeigh (1876) 93 US 274, 23 L ed 914; Hovey v. Elliott (1897) 167 US 409, 17 S Ct 841, 42 L ed 215
 - 21. Bernhard v. Bank of America Nat. Trust & Savings Ass'n., 122 P 2d 892, 894, 895, 1 g Cal. 2d 807
 - 22. E.E. Southern Iron Co. v. Woodruff Realty Co., 158 S.W. 69, 72, 175 Mo. App. 246

The jurisprudence of this Court involving claims of res judicata, attach a fundamental basis for the doctrine to a valid judgment²³. In this respect, res judicata as a rule of justice should not be mistaken as an immunity to violate other party's rights with impunity, and as such, the doctrine provides that where the Court has done justice to the parties litigants, none of them, in the interest of the public should go to Court again. This is the policy that is admirably articulated in Hyman v. Regenstein²⁴, according to which the doctrine of res judicata may be said to adhere in legal systems as a rule of justice.

Res judicata is not an absolute rule of law and must be qualified by public interest and a rule of justice. Hence, it is submitted that "the doctrine of res judicata is to be applied in particular situations as fairness and justice require, and that it is not to be applied so rigidly as to defeat the ends of justice or so as to work an injustice"²⁵.

Thus when confronted with the application of res judicata Courts generally tended to justify it in terms of the principle of fundamental fairness in the due process. This does not mean that on bare claim of res judicata that the trial Court should immediately dismiss the proceedings by injunction. Even in situations which permit of the application of res judicata doctrine, a determination of issues in an action between private parties cannot bar a contest to vindicate the public interest²⁶.

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- 23. 1B Moore Federal Practice, p. 652. Cf also, Windsor v. McVeigh (1876) 93 US 274, 23 L ed 914; Hovey v. Elliott (1897) 167 US 409, 17 S Ct 841, 42 L ed 215
 - 24. (CA 5th Fla) 258 F 2d 502, Cert. den. 359 US 913, L ed 2d 575, 79 S Ct 589
 - 25. 46 Am Jur. 2d, Judgment (Res Judicata), Section 402
 - 26. New York State Labor Relations Board v. Holland Laundry, 294 NY 480, 63 NE 2d 68, 161 ALR 802, reh den 295 NY 568, 64 NE 2d 278

The application of res judicata is also qualified by changed circumstances. As long as conditions giving rise to the judgment remain unchanged, the doctrine should apply to issues adjudged with finality. But where, after the rendition of a judgment, subsequent events occur, creating a new legal situation or altering the legal rights or relations of the litigants, the judgment may thereby be precluded from operating as an estoppel 27, Restatement, Judgments Section 54 reads:

Where a judgment is rendered for the Defendant on the ground of the non existence of some fact essential to the Plaintiff's course of action, the Plaintiff is not precluded from maintaining an action after such fact has subsequently come into existence.

In Ripperger v. A.C. Allyn & Co. (SD NY 1940) 37 F Supp. 373, the Court said:

The principles of res judicata apply to questions of jurisdiction as well as to other issues (citing cases) while a dismissal of an action on the sole ground that the Court has no jurisdiction of the subject matter or of the parties is a conclusive determination of the fact that the Court lacks jurisdiction, it is not an adjudication of the merits and will not bar another action in the proper tribunal for the same cause; nor will it bar a second suit where the pleader in

27. State Farm Mut. Auto. Ins. Co. v. Duel, 324 US 154, 89 L ed 812, 65 S Ct 573; see also, New Orleans v. Gaines (New Orleans v. Whitney) 138 US 595, 34 L ed 1102, 11 S Ct 428

the prior suit failed to allege some essential jurisdictional fact which later is supplied in a new pleading. It is quite true that if the suit be dismissed solely because there is no diversity of citizen between Plaintiff and Defendant, that Plaintiff may bring suit on the same cause of action in the same district if he subsequently becomes a citizen of another state so that diversity of citizenship then exists... and the dismissal of the first suit is not a bar to second in the same Court. But... a different state of facts is presented which alters the situation and calls for a new determination by the Court²⁸.

Western Funding Corp. v. Lafayette, Inc. and George C. Peck (SD NY 1976) aff'd (2d Cir. 1977)

This is a case previously dismissed in a New Jersey District Court under Rule 12(b)6 or for failure to state a claim upon which relief can be granted. New Jersey decision is based on a public policy - N.J.S.A., Section 45: 15-3 (1963) which states that:

No person, firm, partnership, association or corporation shall bring or maintain any action in the Courts of this state for the collection of compensation for the performance of any of the acts mentioned in this article without alleging and proving that he was a duly licensed real estate broker at the time the alleged cause of action arose.

28. Quoted in, 5 Moore Federal Practice, Second ed. (1976). Cf: American Surety Co. v. Baldwin (1932), 287 US 156, 166, 53 S Ct 98, 77 L ed 231, 86 ALR 298 Ripperger v. A.C. Allyn & Co. (CCA 2d, 1940) 113 F 2d 332 (Federal Venue), cert. den. (1940) 311 U.S. 695, 61 S Ct 136, 85 L ed 450, aff'g Ripperger v. A.C. Allyn & Co.

The decision of dismissal was based solely on Act of State of New Jersey reflecting its public policy. Upon a second suit essentially on the same cause of action in the Southern District Court of New York, Judge Carter²⁹ also dismissed the action on a plea of res judicata and collateral estoppel. Judge Carter in this decision confirmed the decision of Judge Coolahan on the basis of public policy, which as we stated above is one of the established exceptions to the rule of res judicata. In the Courts of Appeal, Second Circuit, Judges Smith, Oakes and Timbers in affirming the decisions (citing cases)³⁰ found that:

The ground of this decision was that New Jersey had closed the doors of its Courts to suit for commissions by real estate brokers not licensed in New Jersey ... Weston, concededly not so licensed, was held likewise to be precluded from suing in the New Jersey Federal Court³¹.

Weston appeal in the Second Circuit, is based on the theory that its action is not barred by res judicata and collateral estoppel. At no time did Weston raise the issue that there was no basis for the application of res judicata and collateral estoppel; and if Weston had done so, such claim could not effectively water down the Act of a State or the public policy of a state, which is an issue calling for a specific procedure. The appeal also did not deny the identity in the cause of action, but rests heavily on the chance that it still has a good cause of action in quantum meruit. Weston also conceded that contractual instruments be-

29. Weston Funding v. Lafayette Towers, Inc. 410 F Supp. 980, 983, 985 (SD NY 1976)

30. Woods v. Interstate Realty Co. 337 US 535 (1949); Angel v. Bullington, 330 US 183 (1947); Erle Railroad v. Tompkins, 304 US 64 (1938)

31. Weston Funding v. Lafayette Towers, Inc. & George C. Peck (2d Ar. Slip opinion No. 76-7190, January 4, 1977)

tween the parties were concluded in New Jersey, under New Jersey law which clearly established the law of the case to be the state law of New Jersey (Cf: N.J.S.A., Section 45: 15-3 (1963) rather than the federal law. In this respect the only sole claim of federal jurisdiction by Weston was diversity.

The Court of Appeal found that "the New Jersey Federal Court did not dismiss Weston's action because the Court lacked jurisdiction; it granted summary judgment against Weston presumably for failure to state a claim upon which relief could be granted"³² Citing Woods v. Interstate Realty Co.³³ in which it is stated that no cause of action is recognized by New Jersey law when the broker is unlicensed, the said Court found the principal issue in the decision to be the public policy of a state (New Jersey).

As concerns res judicata, the opinion of the Court of Appeal, affirming the decisions of Judge Coolahan and Judge Carter, is that res judicata and collateral estoppel have no application in state acts or the public policy of a state. The opinion also elucidated on the traditional and modern views of what constitute a judgment "on the merits" concluding that motion to dismiss properly entertained and granted under Rule 12(b)(6), i.e. failure to state a claim upon which relief can be granted, has the effect of res judicata on "the scope of the issue determined in the first proceeding". As Judge Friendly noted earlier, "the important difference that judgments under Rule 12(b)(6) are on the merits, with res judicata effects, whereas judgments under Rule 12(b)(1) are not"³⁴.

It is submitted that the two principal principles of res judicata justifying the dismissal of

32. Ibid, p. 1251

33. Op. cit. supra

34. The Exchange National Bank of Chicago v. Touche Ross & Co., F 2d (2 Air 1976) Slip op. 4073, 4081 (June 9, 1976)

Weston action, does not apply in the present proceeding. In the first place, the issues of dispute between the present parties litigants, do not involve any act of state. In fact, there is no law in New York precluding Plaintiff from asserting his rights under the federal constitution before the Federal Court. On the other hand, the provisions of the federal constitution makes it clear that Plaintiff has locus standi in judicio before the federal Courts and that since the principal issues is a federal question, federal Courts at law have jurisdiction over the subject matter of the dispute.

Secondly, it must be pointed out that in Weston Funding v. Lafayette Towers, Inc. 410 F. Supp. 980, 983, 985 (SD NY 1976) there was no doubt whether the Court had jurisdiction, that is, whether the Federal Court was competent to decide on the merits of the case. This is not so in the instance of this appeal. The Court sitting in equity has no subject matter jurisdiction over issues involving questions of law. Equity jurisdiction of U.S. Courts, it is said, is limited by the provision that suits in equity shall not be maintained "in any case where plain, adequate and complete remedy may be had at law" (Cf: Section 16, Judiciary Act of 1789, I Stat. 82, ch. 20.)

Ayah v. New York University
(ED NY June 1, 1976)

In this action Plaintiff sought to enjoin Defendant from interfering with his Ph.D. program in New York University. The Court found that "Plaintiff was admitted to Defendant's Ph.D. program subject to evaluating final transcripts from Laval University and matriculation exam". The Court concluded that "Defendant has simply denied Plaintiff admission to a program where Plaintiff lacked the prerequisite degree".

As a basis for its decision the Court noted that "a review of the record makes it clear that there is no genuine issue as to a material fact" and decided that it had no jurisdiction over the subject matter because "there is no indication in the papers filed with the Court that Defendant has violated any rights of the Plaintiff which could form a legal basis for a cause of action". Defendant's motion to dismiss was granted

pursuant to Rule 12(b)(1) i.e., for lack of jurisdiction over the subject matter.

According to the interpretation given by a distinguished member of this Court of Appeal in The Exchange National Bank of Chicago v. Touche Ross & Co.³⁵ that judgments under Rule 12(b)(1) are not on the merits and as such, do not have the effects of res judicata. The opinion in Weston case reiterated the established principle that "res judicata does not apply in jurisdictional or procedural issue".³⁶ Jurisdictional issue was the principal issue in the Eastern District Court decision.

Comments

We have now seen that Weston opinion strongly supports Plaintiff's position that there is no basis in this present action for issue preclusion on the grounds of res judicata and its associated doctrine of collateral estoppel. On the other hand the Eastern District decision adjudged that Plaintiff's action was premature³⁷; and according to the rule, this does not mean that Plaintiff will not have a cause of action. And if in their future relations there are issues touching on their legal relations, either party (Defendant or Plaintiff) is not to be precluded from seeking appropriate legal redress. Even though, as clearly put forward by the Plaintiff in his Answering Memorandum of Law, the action before the Southern District is of an independent legal character.

Res judicata as an established rule of law, does not apply in judgments involving public policy and denial of justice. Plaintiff needs not belabor the fact, the Court in the Eastern District, should have allowed

35. Op. cit.

36. Op. cit.

37. "Rule 41(b) recognized that, in the nature of things, a dismissal for lack of jurisdiction... deals merely with a precondition that, unsatisfied, precludes the Court from going forward with the case to determine the merits of Plaintiff's substantive claim". 5 Moore Federal Practice, p. 1174; see also, Costello v. United States (1961) 365 US 265, 285-288, 81 S Ct 534, 5 L ed 2d 551

Plaintiff to have his day in Court. There is no law in New York that precludes Plaintiff from making proper defense against a motion for dismissal under Rule 12(b) (1) and Rule 56(b). Besides there are numerous cases in which it is asserted that a summary judgment should not be granted in cases of motive and emotion; and that an order of dismissal should be based on the entire records and in the face of overwhelming evidence that such complaint is frivolous. This is basically a question as to whether the Eastern District decision is res judicata. Besides the fact that this Plaintiff was denied due process, the decision in the said Eastern District Court is a very heavy burden on the Plaintiff - so grossly unjust - as to be inadmissible "in a rational administration of justice" Cf: Wayside Transport Co. v. Marcells Motor Exp. Inc., 294 F 2d 868, 871 (1st Circuit 1960).

Also no jurist of merit will now say that the decision in the Southern District is res judicata. The Court should have abstained from deciding issues involving questions of law rather than interfere with the proceedings by an injunction - in a case in which Defendant has not a clear vested right and its claim or entitlement to a summary judgment rests in mere expectancy. Prof. Moore³⁸ has stated that the hearing on an application for preliminary relief is not the trial of the action, and hence Rule 41(b) has no application. Since there is no ground for estoppel by virtue of res judicata there is equally no grounds for dismissal for the specific reasons that res judicata does not apply in instances of denial of justice and res judicata is never intended as an immunity to preclude the exercise of constitutional rights of any party litigant.

38. Op. cit., supra

V

THAT FAILURE TO ADHERE TO DUE PROCESS
REQUIREMENTS AND THE ABSENCE OF FAIR
TRIAL CONSTITUTED AN INITIAL BREACH OF
INTERNATIONAL LAW

The Basis for a denial of Justice

There is no doubt, and this Appeal Court may agree with this position, that the order of the lower Court, if upheld by this Court, would only justify denying Plaintiff right to a trial. This is a diversity case involving federal question. And in fact this Court is called upon to declare if there is an initial breach of international law as well as to decide whether the procedure in the lower Court in any way constituted a breach of the municipal law.

The American Law Institute in its Study #108 proposes:

It is important in the relations of this country with other nations that any possible appearance of injustice or tenable ground for resentment be avoided. This objective can best be achieved by giving the foreigner the assurance that he can have his case tried in a Court with the procedures the federal government can supply and with the dignity and prestige of the United States behind it.

This proposal is in agreement with the principle laid down in Morgan v. LaVallee, 526 F 2d 221, 224 (2d Cir. 1975) that before a district Court may relinquish its civil rights jurisdiction it must be assured that "there are speedy, sufficient and readily available administrative remedies remaining open to pursue". To quote Judge Friendly endorsing A.L.I Study #108:

A federal Court often must exhaustively dissect each piece of evidence thought to cast light on what the highest state Court would ultimately decide³⁹.

and particularly if "all such cases are pregnant with the possibility of injustice"⁴⁰. Doing justice to parties litigant is the principal function of federal Courts and its primary duty is to protect the constitution, interpret and apply its provisions.

Under the provisions of the U.S. Constitution a foreigner has access to federal Courts in cases involving federal questions. Refusal to entertain any such cases properly brought before it, would amount to nothing more than a denial of justice, thus giving rise to an assertion of right under international law.

It has often been asserted that the term "denial of justice" is vague⁴¹ in international jurisprudence and that for in order to establish claim for a denial of justice the party asserting such a claim must first justify that he had exhausted all available local remedies⁴². On the other hand, there is a rule that supports the position that it is not necessary, where the allegation of a denial of justice is raised, for the party making such a claim to have to establish exhaustion of local remedy. As Prof. Fawcett puts it whether or not there has clearly been a denial of justice must be determined by an international tribunal⁴³.

39. Federal Jurisdiction: A General View (1973) p. 142

40. Ibid, p. 143

41. Prof. Lissitzyn, 30 Am Journ. Int. Law (1936) p. 646. See definition in Hyde, I International Law, 491-492; Calvo in I Dictionnaire de Droit Int., says "Dans le langage général, déni de justice se dit de tout refus d'accorder à quelqu'un ce qui lui est dû" (Refusal to give to one what is due him); Eagleton, 22 Am Journ. Int. Law (1928), 110-121; Spiegel, 32 Am Journ. Int. Law (1938) p. 63; De Vischey, 52 Hagne Recueil des Cours (1935-11), places its meaning between international and municipal law; Fritzmaurice Brit. Yr. Book Int. Law 13 (1932)

42. Maron, 35 Brit. Yr. Bk. Int. Law 83 (1959)

43. Note, Brit. Yr. Bk. Int. Law, 31 (1954). Cf also, Prof. Verzijl, Annuaire de l'Institut de droit int., 45 (1954)

It is suggested that a denial of justice could ensue in cases in which there is a discriminatory application of the municipal law. In principle, the property rights and the contractual rights of individuals depend in every state on municipal law and fall therefore more particularly within the jurisdiction of municipal tribunals⁴⁴. This means that the meaning of denial of justice is governed by national standard. Since in the United States a foreigner is not precluded from instituting and maintaining a claim before federal Courts, the refusal to permit full trial for a claim will be an instance of a denial of justice.

In the words of Prof. Wambaugh, denial of justice "is restricted to the instances where the wrong has been done through misconduct or inaction whose nature is judicial"⁴⁵. In municipal law, however, the term "denial of justice" has been greatly restricted in meaning, being usually applied to the refusal of a judge to take cognizance of, or to pronounce a decision on, any legal claim duly submitted to him and of which he has jurisdiction⁴⁶. These interpretations concur with the practice of this Court and in conformity with the principle laid down in Morgan v. LaVallee⁴⁷. In the words of Prof. Clyde Eagleton, a former member of New York University Politics Department, and a distinguished scholar on this subject:

It seems to be clearly established from practice and generally admitted, that denial of justice is the failure to make reparation through local agencies of redress, for an injury suffered by an alien. Where such injuries emanate from agents of the state, denial of

44. Panevezys-Saldutiskis Railway case (1939) P CIJ, Series A/B, No. 76, p. 18

45. In, Pro. Am. Soc. Int. Law, IV (1910)

46. Lissitzyn, Op. cit., p. 632

47. Op. cit., supra

justice is a reaffirmation of responsibility; where they emanate from individuals, denial of justice is the original establishment of responsibility. In either case, while responsibility may perhaps be already engaged, denial of justice does not appear until local remedies have been found wanting. Such local remedies are usually within the province of the judicial department, and denial of justice is, therefore, usually apparent within the Courts⁴⁸.

Article 9, Harvard Drafts Convention on Responsibility of states reads:

Denial of justice exists when there is a denial, unwarranted delay or obstruction of access to Courts, gross deficiency in the administration of judicial or remedial process, failure to provide those guarantees which are generally considered indispensable to the proper administration of justice, or a manifestly unjust judgment⁴⁹.

For the purpose of establishing a denial of justice, as in this case, this Court should take judicial notice that the principal issues in this dispute are concerned with the property rights and liberty interests

48. 22 Am. Journ. Int. Law (1928), pp. 558-559. A rather broad definition is given to the term by Mr. Neilsen in the Neer case, General claims Commission, U.S. and Mexico Opinions, pp. 77-78; and by Dr. Hyde, International Law, pp. 491-492.

49. Research in Int. Law, Supplement Am. Journ. Int. Law, vol. 23, April 1929, p. 173

of the Plaintiff-Appellant. As this Plaintiff pointed out in his Brief supporting the complaint, these are rights which federal Courts customarily protect.

We are no longer in the dark, disgraceful period of history when foreigners are treated as barbarians. In endorsing the definition of "denial of justice"⁵⁰ stated above, Prof. Fenwick goes on to define what he calls the fundamental rights of foreigners which according to him should be governed by the doctrine of equality of treatment, as follows:

" Alien's substantive rights are the rights of the citizens of the country, less those special civil and political rights reserved to citizens. His procedural rights are in like manner those of the citizens of the country. If a wrong is done to him he expects to appeal to the same law for redress and to have access to the same Courts that are open to the nationals of the country. His rights of personal security, and his personal liberty are as sacred as those of the citizens; his property rights, and his rights under contract, limited as they may be, are entitled to the same protection of law. If his rights are violated he has access to the Courts of the state for redress upon the same footing as if he were a citizen⁵¹. "

Plaintiff-Appellant claims that he is also entitled to equal treatment under the law of the United States, specifically as provided in the first and fourteenth amendments of the constitution.

50. International Law, 4th ed., p. 329

51. Ibid, p. 329

Allegations as to initial breach
of international law

(A) In the Eastern District Cour , Plaintiff-Appellant was not allowed by the Court to make proper defense of his case, in the face of a motion to dismiss by summary judgment, by the Defendant-Appellee. Secondly, decision granting Defendant's motion was not based on the whole record of the case. A copy of Court's record attached to forms C & D in this appeal, shows there is no entry of Plaintiff's Brief. The Defendant is now relying heavily on this Brief in its support of res judicata and collateral estoppel.

(B) In the Southern District Court, the Court was not familiar with the case, and should not have intervened by injunction in the orderly process of justice. Equity "jurisdiction" is not a grant of jurisdiction to entertain and decide issues of law.

These Courts should not conclude merely because Plaintiff is not a United States citizen, that he is not entitled to a fair trial. In this case, Plaintiff has genuine grievances which are properly presented to the federal Courts for relief. Therefore it cannot be asserted that there is equal protection of law in a trial where Plaintiff's case was prejudged for dismissal and in which the Courts assume that only the Defendant has an interest which should be protected. The general rule is that the right to trial is fundamental unrestricted by the discretionary power of municipal Courts. This is a grave defect in the proceeding which clearly affected the substantive rights of the Plaintiff.

Prof. Moore explains that the general structure of the provision of Rule 41(b) governing the operative effect of an order for dismissal gives the District Court, which is familiar with the case, needed discretion in forming its order of dismissal, while avoiding, in most, although not all, cases, any need for speculation as to the intent of the Court and the effect of its dismissal order, where the order fails to indicate whether or not it is with prejudice⁵².

52. 5 Moore Federal Practice (1976), p. 1176

The lower Court's decision denying Plaintiff the right to trial does not satisfy the minimum standard which can be justified under international law. In the absence of a fair trial or in the belief that there will be a denial of trial, Plaintiff-Appellant is entitled under the circumstances to commence legal actions in Nigeria against New York University or to seek diplomatic protection on the plea of a denial of justice. Appellant's position is that the dispute is no longer one that should be regarded as concerning private persons, and that this Appeal Court is asked to assume its functions and duties in this case in order to determine if there is an initial breach of international law.

Plaintiff-Appellant prays this Court of Appeal not to endorse a very dangerous precedent that will have a serious international repercussion.

C O N C L U S I O N

It is respectfully submitted that Plaintiff-Appellant is entitled to a fair trial as a matter of law and justice.

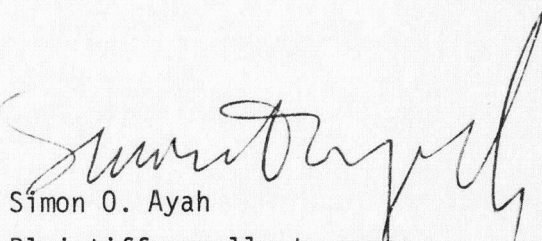
Yours very truly,

SIMON O. AYAH
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CERTIFICATE OF SERVICE

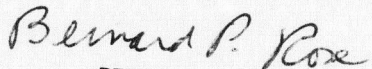
I hereby certify that on April 5th 1977 a copy of this brief was mailed postage pre-paid to William C. Porth, Esq. attorney for the defendant-appellee in the proceedings: Ayah v. New York University, Docket No 77-7080.

Dated: New York, New York
April 5, 1977


Simon O. Ayah
Plaintiff-appellant, prose

Sworn to before me

6 day of April, 1977



BERNARD P. ROSE
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Qualified in Queens County
Commission Expires March 30, 1977

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